

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Process Reform for Executive Branch)	IB Docket No. 16-155
Review of Certain FCC Applications and)	
Petitions Involving Foreign Ownership)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) submits these reply comments in response to comments filed regarding the Notice of Proposed Rulemaking (“NPRM”) issued in the above-captioned proceeding.¹ The record clearly indicates that the Executive Branch process of reviewing certain applications subject to Federal Communications Commission (“FCC” or the “Commission”) approval needs reform. CCA urges the Commission to adopt proposals recommended herein to improve the timeliness and transparency of this referral and review process.

I. INTRODUCTION

CCA applauds the FCC for its efforts to reform the process by which the Executive Branch agencies known as Team Telecom (which includes the Departments of Justice, Homeland Security, Defense, Commerce, State, Federal Bureau of Investigation, and United

¹ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, FCC 16-79, IB Docket No. 16-155 (rel. June 24, 2016) (“NPRM”).

States Trade Representative) review certain applications and petitions for declaratory ruling involving foreign ownership.

CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers serving carriers of all sizes. CCA members with foreign ownership and other interests would benefit tremendously from a more predictable, streamlined Team Telecom review process.

As the NPRM notes, the current Team Telecom review process lacks concrete standards of review or a reliable decision timeline, and often results in sustained delays; these conditions deter investment, create uncertainty and prevent applicants from moving forward with significant business decisions.² Such delay and lack of transparency is detrimental both to American businesses, especially small businesses which can be resource-constrained, and consumers and ultimately harms America's global competitiveness. These issues can be avoided, however, with appropriate revisions to the Team Telecom review process. Specifically, the FCC and Team Telecom should:

- Create of a 90-day “shot clock” period, which will begin when an application is submitted to Team Telecom, for Team Telecom to complete its review of new license applications, merger consents, and foreign ownership petitions;
- Allow for an additional 90-day extension, but only in unusual circumstances;

² *Id.*, ¶ 11.

- Adopt a standardized questionnaire that limits requests to information that is relevant to legitimate national security and law enforcement concerns relating to foreign ownership or control; and
- Require that the Team Telecom questionnaire be submitted directly to Team Telecom, simultaneous with submission to the FCC; and
- Eliminate the requirement to seek Team Telecom review for previously-reviewed and approved applicants with foreign ownership whose ownership is materially unchanged.

By implementing these reforms, the Commission can ensure a robust and efficient review process that appropriately honors national security concerns while bolstering the United States' position as one of the world's most favorable destinations for telecommunications investment.

II. THE COMMISSION SHOULD ESTABLISH A CLEAR TIMELINE FOR COMPLETION OF TEAM TELECOM'S REVIEW

Two of the largest challenges in the current Team Telecom process relate to timing. The review period is typically very lengthy and the timing of the review process is unpredictable. Under the current system, Team Telecom reviews can last several months and sometimes even years. As Chairman Wheeler recently noted, the average Team Telecom review takes 250 days—over 8 months.³ To resolve these timing issues, CCA supports the Commission's proposal to establish a firm 90-day "shot clock" for Team Telecom to complete its review of new license applications, merger consents, and foreign ownership petitions.⁴ As the record shows,

³ In a recent statement, FCC Chairman Wheeler indicated that the average Team Telecom review takes 250 days. *See* Statement of Chairman Tom Wheeler, *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155 (June 24, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-340002A2.pdf.

⁴ NPRM ¶ 36.

there is broad support across industry for the adoption of a clear timeline for review; wireless carriers, wireline providers, satellite providers and broadcasters all agree that there should be a timeline applicable to the review, and specifically support the 90-day proposal.⁵

If Team Telecom has not otherwise notified the Commission of the results of its review by the end of the 90-day period, then the Commission should move forward and act on the application. This, in essence, mirrors the FCC's streamlined "deemed granted" process that requires the Commission to act within an established time period or be subject to automatic approval. This streamlining procedure will allow for predictability in the review process by providing parties with certainty that the outcome of Team Telecom's review will be decided in no more than 90 days, which begins when the application is filed with Team Telecom. Additionally, in the interest of expediting the review process, Team Telecom should notify the Commission as soon as its review of an application is finished, rather than waiting for the 90-day period to run. CCA also supports the Commission's proposed notice requirement.⁶

A 90-day review process is ample time for Team Telecom to complete a review. As noted by numerous commenters, the structure and success of the Committee on Foreign Investment in the United States ("CFIUS") process suggests that this time period is more than sufficient.⁷ Pursuant to Section 721 of the Defense Production Act of 1950, as amended,

⁵ See, e.g., Comments of Sprint Corporation at 2-4; Comments of T-Mobile at 5-7 ("T-Mobile Comments"); Comments of CTIA at 4-6 ("CTIA Comments"); Comments of INCOMPAS at 4-7 ("INCOMPAS Comments"); Joint Comments of CBS Corporation, 21st Century Fox, Inc., Univision Communications Inc. and the National Association of Broadcasters at 5-6; Comments of the Satellite Industry Association at 3 ("SIA Comments"); Comments of Verizon at 3. Unless otherwise indicated, all comments referenced herein were filed in IB Docket No. 16-155 on August 18, 2016.

⁶ NPRM, ¶ 40.

⁷ See, e.g., INCOMPAS Comments at 5; SIA Comments at 3-4; Level 3 Comments at 4-5.

transactions submitted to CFIUS undergo an initial 30-day review.⁸ If CFIUS determines that a transaction raises significant national security issues as a result of this review, it will undertake an additional 45-day investigation. In exceptionally rare cases the President then has 15 days to decide whether or not to block the acquisition. As Level 3 noted in its comments, since CFIUS began submitting an annual report to Congress on covered transactions in 2008, 782 notices of transactions have been submitted for CFIUS review. Of these 782 notices, more than 60 percent have been reviewed and cleared within the initial 30-day review period.⁹ Given the comparable nature of the transactions reviewed by CFIUS and Team Telecom, and the clear efficiency with which CFIUS is able to complete its review, CCA believes that a 90-day review period is a realistic window for Team Telecom.

While CCA generally supports the Commission’s proposal to allow a one-time additional 90-day extension of the review period, we believe that such an extension should only be invoked in unusual circumstances. Level 3 explained that the rules should allow for a one-time exemption “only in the event of a *force majeure* event (*i.e.*, a natural disaster or government shutdown) or in cases where an application meeting certain criteria requires additional investigation by Team Telecom,” such as review of new classes of technology and material ownership by a foreign government.¹⁰ Several other commenters set forth analogous views expressing their support for an extension only in exceptional cases.¹¹ CCA agrees that any exemption should be allowed only in very limited situations.

⁸ 50 U.S.C. § 4565(b)(1)(E).

⁹ Level 3 Comments at 4.

¹⁰ Comments of Level 3 Communications, LLC at 5 (“Level 3 Comments”).

¹¹ *See, e.g.*, Sprint Comments at 4; CTIA Comments at 5; INCOMPAS Comments at 7; Comments of Wiley Rein LLP on behalf of Certain Telecommunications Companies at 6.

III. THE COMMISSION SHOULD ADOPT A STANDARDIZED QUESTIONNAIRE FOR APPLICANTS SUBJECT TO TEAM TELECOM REVIEW

CCA supports the Commission's proposal to standardize and make public the questionnaire used for Team Telecom review.¹² A well-drafted questionnaire will help make the review process more efficient and transparent. If implemented properly, a standardized questionnaire will assist companies in their efforts to gather required information at the outset of the process. Moreover, CCA believes that companies should be required to provide answers to the questionnaire to Team Telecom at the same time the Commission application is filed, thus launching the proposed 90-day review period.

Like many commenters, CCA believes that only information that is relevant to legitimate national security and law enforcement concerns relating to foreign ownership or control of the facility in question should be required of applicants and petitioners.¹³ Whether approval of an application serves the public interest is solely within the purview of the Commission, which only is required to accord deference to Team Telecom on review of national security, law enforcement, foreign policy, and trade policy issues that may arise from the foreign ownership interest held in applicants.¹⁴ As noted by several commenters, many of the sample questions that the National Telecommunications and Information Administration ("NTIA") submitted on behalf of Team Telecom go beyond the scope of its review.¹⁵ For example, NTIA's sample

¹² NPRM, ¶ 23.

¹³ *See, e.g.*, T-Mobile Comments at 8-11; Level 3 Comments at 19; CTIA Comments at 6; INCOMPAS Comments at 9. Updating applications already approved, for example, would not be considered a concern meriting use of the Team Telecom process.

¹⁴ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report & Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,919-20 ¶ 63 (1997).

¹⁵ *See, e.g.*, T-Mobile Comments at 8-11; Sprint Comments at 5-7; Level 3 Comments at 19.

questionnaire proposes that applicants be required to provide “[t]he name of any and all financial institutions providing support or other assistance” and “[a]udited financial statements from the preceding accounting year, or suitable equivalent.”¹⁶ It is our understanding that neither the Commission nor Team Telecom have ever required applicants or petitioners seeking Section 214 or similar authorizations to provide this sort of information. But even if they did request this information, it is not relevant to the sorts of issues that fall within the Commission’s or Team Telecom’s authority and should not be required as part of a standardized questionnaire.¹⁷ The proposed questionnaire contains other onerous questions including requests for an “explanation of the applicant’s intended overall business model for licensed and unlicensed services in the United States for the next five years” and information regarding regulatory and penal actions of “any and all affiliated entities, including any entities which share one or more owners with the applicant.”¹⁸ These overbroad requests are unlikely to advance the Commission’s goal of more efficient reviews, and CCA agrees with the various commenters that the Commission should publish the proposed questionnaire and seek notice and comment from interested parties to ensure that elicited information is relevant to Team Telecom’s review and is not unduly burdensome to industry.¹⁹

Finally, CCA does not support the Commission’s proposal that would require submission of the questionnaire to the Commission first, rather than directly to Team Telecom. The NPRM suggests that the Commission should screen the questionnaire prior to Team Telecom, and

¹⁶ NPRM, App. D.

¹⁷ In the unlikely event that such information turns out to be directly relevant to a Team Telecom review of a particular petition, CCA believes that Team Telecom should seek such information through limited follow-up questions (during the 90-day review period).

¹⁸ NPRM, App. D.

¹⁹ See, e.g., T-Mobile Comments at 8-11; Level 3 Comments at 19.

review the “responses to the threshold questions for completeness.”²⁰ CCA agrees with other commenters that this proposal does not support the goal of streamlining the Team Telecom review process.²¹ Instead it would slow down the review process without any measurable benefit. Moreover, CCA agrees with commenters that the questionnaire should be submitted to Team Telecom on the same date as submission of the Commission application or petition.²² These simultaneous submissions would then serve to launch the proposed 90-day review period.

IV. BARRING MATERIAL CHANGES TO AN APPLICANT’S FOREIGN OWNERSHIP, PREVIOUSLY-REVIEWED APPLICANTS SHOULD NOT BE REFERRED TO TEAM TELECOM

To allocate resources and time most effectively, entities with foreign ownership that have already undergone Team Telecom review should not be required to do so again, unless their foreign ownership interests have materially changed. Creating an exemption or exception to this effect would reduce unnecessary regulatory costs and allow Team Telecom to focus its resources toward new applications and applications meriting closer scrutiny. In 2013, the FCC successfully reduced regulatory and administrative burdens by relieving entities with approved foreign ownership from filing a new application, and undergoing a new Team Telecom approval process, for Section 310(b) petitions.²³ For the benefit of all applicants, the FCC should adopt a similar policy with respect to Section 214, satellite earth station, and submarine cable landing license applications.

²⁰ NPRM, ¶ 25.

²¹ *See, e.g.*, Level 3 Comments at 12; T-Mobile Comments at 11; Sprint Comments at 2. *Cf.* Comments of the National Telecommunications & Information Administration at 4-5.

²² *See* T-Mobile Comments at 11.

²³ *See* Comments of Telecommunications Companies at 10.

V. CONCLUSION

CCA urges the Commission to adopt the above proposals to improve the timeliness and transparency of the Team Telecom review process. The process is in desperate need of reform, and a failure to act to address these issues will further jeopardize the position of the United States as a desirable and competitive destination for foreign investment in the telecommunications sector.

Respectfully submitted,

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